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11 **IN THE UNITED STATES DISTRICT COURT**

12 **FOR THE DISTRICT OF COLUMBIA**

13 STATE OF ARIZONA
14 1275 West Washington
15 Phoenix, Arizona 85007,

16 Plaintiff,

17 vs.

18 ERIC H. HOLDER, JR., Attorney General of
19 the United States of America, in his Official
20 Capacity,
21 U.S. Department of Justice
22 950 Pennsylvania Avenue, N.W.
23 Washington, D.C. 20530-0001

24 Defendant.

Case No.

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

23 The State of Arizona, through undersigned counsel, brings this civil action for declaratory
24 judgment that §§ 4 and 5 of the Voting Rights Act of 1965, as amended in 2006 (the “VRA” or
25 the “Act”) are unconstitutional and seeks injunctive relief preventing enforcement of these
26 sections of the Act and alleges as follows:

1 **I. THE PARTIES**

2 1. Defendant Eric H. Holder, Jr. is the Attorney General of the United States of America
3 (“U.S. Attorney General”) and, as head of United States Department of Justice (“DOJ”), has
4 responsibilities including but not limited to enforcing the VRA. The U.S. Attorney General is
5 sued in his official capacity.

6 2. The State of Arizona is a sovereign state within the United States of America.
7

8 **II. JURISDICTION AND VENUE**

9 3. This Court has jurisdiction under Article III of the Constitution of the United States
10 and pursuant to 28 U.S.C. § 1331 because the matters in controversy arise under the VRA and
11 the Tenth, Fourteenth, and Fifteenth Amendments of the Constitution and present a federal
12 question.

13 4. This Court also has jurisdiction pursuant to 28 U.S.C. § 1346 because an officer of the
14 United States is the Defendant.

15 5. Plaintiff is seeking relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§
16 2201, 2202.

17 6. Venue lies in the District Court for the District of Columbia pursuant to 42 U.S.C. §
18 19731(b)

19 **III. THREE JUDGE PANEL**

20 7. Pursuant to 28 U.S.C. § 2284 and 42 U.S.C. § 1973c(a), Plaintiff requests
21 appointment of a three-judge Court to hear and resolve this Complaint.
22

23 **IV. DECLARATORY JUDGMENT**

24 8. There is an actual controversy of sufficient immediacy and concreteness relating to
25 the legal rights and duties of the Plaintiff and its legal relationship with the Defendant to warrant
26 relief under 28 U.S.C. §§ 2201, 2202.

1 15. Section 5 of the VRA was passed as a temporary, five-year measure requiring
2 covered jurisdictions to obtain preclearance for all changes to election laws and regulations.
3 Voting Rights Act, Pub. L. 89-110, Title I, § 5, 79 Stat. 438-39 (1965). As set forth below,
4 Arizona has been made subject to these preclearance requirements for over 35 years.

5 16. Arizona’s Apache, Coconino, Navajo, and Yuma counties were initially covered
6 under the 1965 VRA preclearance formula.¹ Within one year, however, Apache, Coconino, and
7 Navajo counties successfully bailed out of coverage after obtaining the permission of both the
8 U.S. Attorney General and the D.C. District Court. *Apache County v. United States*, 256 F.
9 Supp. 903, 906, 910 (D.D.C. 1966).

10 17. After a five-year renewal, the VRA’s preclearance provisions were due to expire
11 in 1975. The United States Commission on Civil Rights compiled information on voting
12 practices in covered jurisdictions and recommended that Congress (1) renew all expiring
13 provisions for ten years and (2) expand the Act to protect “language minorities.”² Congress,
14 pursuant to this recommendation, enacted the 1975 Voting Rights Act.³ The 1975 VRA sought
15 to protect “language minorities” by requiring “covered jurisdictions” to be subject to prescribed
16 preclearance procedures of the Justice Department before a new voting law and/or qualification
17 could be adopted or implemented. The purpose of this law was to prevent covered jurisdictions
18 from replacing discriminatory and invalid voting laws with new discriminatory enactments.

19 18. Section 4 of the 1975 VRA caused any state for “which (i) the Attorney General
20 determine[d] maintained on November 1, 1972, any test or device, and with respect to which (ii)
21 the Director of the Census determine[d] that less than 50 per centum of the citizens of voting age

22 ¹ Determination of the Director of the Census Pursuant to § 4(b)(2) of the Voting Rights Act of
23 1965, 30 Fed. Reg. 9897 (1965) (Apache); Determination of the Director Pursuant to § 4(b)(2)
24 of the Voting Rights Act of 1965, 30 Fed. Reg. 14505 (Coconino & Navajo); Determination of
the Director Regarding Voting Rights, 31 Fed. Reg. 982 (1966) (Yuma).

25 ² United States Commission on Civil Rights, *The Voting Rights Act: Ten Years After* 344-56
26 (1975). This report (“Ten Years After”), was relied on by Congress in drafting the Voting
Rights Act of 1975 (“1975 VRA”). See S. Rep. No. 94-295 (1975).

³ 42 U.S.C. 1973, et. seq.

1 were registered on November 1, 1972, or that less than 50 per centum of such persons voted in
2 the Presidential election of November 1972” to be a covered jurisdiction. 42 U.S.C. § 1973b(b).
3 Section 4 of the 1975 VRA also defined “test or device” as used in the first criterion to include
4 “any practice or requirement by which any State or political subdivision provided any
5 registration or voting notices, forms, instructions, assistance, or other materials or information
6 relating to the electoral process, including ballots, only in the English language, where the
7 Director of the Census determines that more than five per centum of the citizens of voting age
8 residing in such State or political subdivision are members of a single language minority.” 42
9 U.S.C. § 1973b(f)(3). Arizona implemented bilingual voting in 1974, a year before the Act was
10 passed, but after the arbitrary 1972 cutoff date.

11 19. Pursuant to the 1975 VRA, the U.S. Attorney General and the Director of the
12 Bureau of the Census determined that under §§ 4(b) and 4(f)(3) of the Act, Arizona was a
13 covered jurisdiction. The basis for this determination rested on the significant Hispanic
14 population of the State and the fact that in 1972, English “only” voting materials were used.

15 20. To determine members of a “single language minority group,” Congress relied on
16 the definition of “Spanish heritage” used by the Bureau of Census in the 1970 census. S. Rep.
17 No. 94-295 n.14 (1975) (summarizing definition); H.R. Rep. 94-196 n.16 (1975) (same). The
18 formula for whether a state met the 5% threshold for persons of “Spanish heritage” was
19 calculated in three different ways for three different groups of states, as shown in the following
20 chart:

	A	B	C
	“Spanish language” defined as: “persons of Spanish mother tongue and all other persons in families in which the head or wife reported Spanish as his or her mother tongue”	“Spanish surname” defined as: “a list of over 8,000 Spanish surnames originally compiled by the Immigration and Naturalization Service (and later updated by the Bureau of Census)”	“Puerto Rican birth or parentage” defined as: “persons born in Puerto Rico and persons born in the United States or an outlying area with one or both parents born in Puerto Rico”
42 States and the District of Columbia	Included	-	-
Arizona, California, Colorado, New Mexico, and Texas	Included	Included	-
New Jersey, New York, and Pennsylvania	-	-	Included
Source: U.S. Department of Commerce, Bureau of the Census, 1970 Census of Population, Vol. I Characteristics of the Population, Pt. 1 United States Summary, §2, Appendix B App-17 to -18 (Issued June 1973), attached as Exhibit C.			

Using the foregoing chart, Arizona was deemed to be a covered state because at least 5% of the population fell within the A and B columns set forth above.

21. Just because a person claims that Spanish is his mother tongue does not mean that he cannot speak or read English or that he suffers from discrimination. The same is true of those with a Spanish surname. There is no basis to claim that a person with a Hispanic surname cannot read or speak English or suffers from discrimination. The entire classification system is flawed, arbitrary, and irrational. No explanation was given as to why persons with a “Spanish surname” (but who did not speak Spanish as their native language) would encounter discrimination in Denver but not Las Vegas or Orlando; why a person who did not speak Spanish but had one Puerto Rican parent would face discrimination in Erie but not Stamford or Chicago; or why persons who spoke Spanish as their native language and did not have “Puerto Rican birth or parentage” faced discrimination only in the forty-seven states not named New

1 Jersey, New York, or Pennsylvania.

2 22. The definitions of “Spanish language” and “Puerto Rican birth or parentage”
3 included white English speakers raised in the United States within the calculation of “language
4 minorities” if they married a native Spanish speaker or were born to vacationers in Puerto Rico.
5 As such, a white English speaker would be classified as a “language minority” upon marriage to
6 a Spanish speaker in Baltimore but not when the couple moved to Atlantic City, and a non-
7 Hispanic English speaker born to vacationers in Puerto Rico would be classified as a “language
8 minority” while residing in Pittsburg but not upon moving to Cleveland.

9 23. In addition to the irrational and arbitrary classification system described above, the
10 1972 trigger date set forth in the 1975 VRA was also irrational and arbitrary. By 1974, Arizona
11 had switched to a bilingual election system, which included ballots, voting machine forms, and
12 voting machine instructions in both Spanish and English. *See* Extension of the Voting Rights
13 Act of 1965: Hearing Before the S. Subcomm. on Constitutional Rights of the Comm. on the
14 Judiciary, 94th Cong. (April 30, 1975) (Testimony of Hon. Barry Goldwater, A U.S. Senator
15 From the State of Arizona). Consequently, at the time of the enactment of the 1975 VRA,
16 Arizona had in place an electoral system that was designed to ensure that all of its citizens,
17 including Hispanics who only spoke limited English, could effectively exercise their right to
18 vote and engage in the electoral process to the same degree as other citizens.

19 24. In 1974, Arizona elected Raul Castro, as governor. In doing so, Arizona became
20 only the second state in the nation to popularly elect a Hispanic governor. National Governors
21 Association, *Governors Database*,
22 <http://nga.org/portal/site/nga/menuitem.216bea7c618ef3f8a278110501010a0/> (search Race as
23 “Hispanic”) (last accessed June 3, 2011).

24 25. Congress passed twenty-five year reauthorizations of the 1975 VRA preclearance
25 provision in 1982 (“1982 VRA”) and 2006 (“2006 VRA”) respectively.

26 26. In 2006, Congress recognized that “significant progress” had been made in
addressing the concerns that originally justified the VRA and cited “increased numbers of

1 registered minority voters, minority voter turnout, and minority representation.” See Fannie Lou
2 Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and
3 Amendments Act of 2006, H.R. 9, 109th Cong. § 2(b)(1) (2006).

4 27. Nevertheless, the 2006 VRA left the 1975 formula for §5 coverage essentially
5 unchanged when extending the Act in order to combat “second generation barriers” such as
6 “racially polarized voting.” *Id.* at § 2(b)(2)-(3). “Racially polarized voting” is not an indicator
7 of discrimination.

8 28. The 2006 VRA also amended §5 by adding subsections (b) to (d). Pub. L. 109-
9 246, § 5(3). These additions allow the U.S. Attorney General to interpose an objection to a
10 change in voting, as broadly defined by the Act, if the change would diminish “the ability of any
11 citizens of the United States on account of race or color . . . to elect their preferred candidates of
12 choice,” and makes it clear that discriminatory purpose includes any discriminatory purpose. *Id.*

13 29. In reauthorizing §5 in 2006, Congress failed to specifically identify evidence of
14 continuing discrimination in covered jurisdictions such as Arizona. Indeed, when the 1975
15 VRA was enacted, the conditions that caused Arizona and its political subdivisions to be
16 covered by §5 no longer existed, and did not even exist when the 1975 Act was passed. Those
17 conditions have not existed since 1974.

18 30. Congress defied the Supreme Court’s admonishment that such extensive meddling
19 would “exacerbate the ‘substantial’ federalism costs that the preclearance procedure already
20 exacts, perhaps to the extent of raising concerns about §5’s constitutionality.” H.R. Rep. No.
21 109-478 (2006) (quoting with disagreement *Reno v. Bossier Parish*, 528 U.S. 320, 336 (2000)).

22 **BURDENS ON ARIZONA**

23 31. Arizona has now been subject to the burdens of the preclearance procedure for
24 over thirty-five years.

25 32. Covered jurisdictions must submit to this federal review process for “[a]ny change
26 affecting voting, even though it appears to be minor or indirect, returns to a practice or
procedure, ostensibly expands voting rights, or is designated to remove the elements that caused

1 objection by the Attorney General to a prior submitted change.” 28 C.F.R. § 51.12.

2 33. Voting changes subject to preclearance include, but are not limited to the list set
3 out in 28 C.F.R. § 51.13:

- 4 a. Any change in qualifications or eligibility for voting.
- 5 b. Any change concerning registration, balloting and the counting of votes and
6 any change concerning publicity for or assistance in registration or voting.
- 7 c. Any change with respect to the use of a language other than English in any
8 aspect of the electoral process.
- 9 d. Any change in the boundaries of voting precincts or in the location of
10 polling places.
- 11 e. Any change in the constituency of an official or the boundaries of a voting
12 unit (e.g., through redistricting, annexation, deannexation, incorporation,
13 reapportionment, changing to at-large elections from district elections, or
14 changing to district elections from at-large elections).
- 15 f. Any change in the method of determining the outcome of an election (e.g.,
16 by requiring a majority vote for election or the use of a designated post or
17 place system).
- 18 g. Any change affecting the eligibility of persons to become or remain
19 candidates, to obtain a position on the ballot in primary or general elections,
20 or to become or remain holders of elective offices.
- 21 h. Any change in the eligibility and qualification procedures for independent
22 candidates.
- 23 i. Any change in the term of an elective office or an elected official or in the
24 offices that are elective (e.g., by shortening the term of an office, changing
25 from election to appointment or staggering the terms of offices).
- 26 j. Any change effecting the necessity of or methods for offering issues and
propositions for approval by referendum.

1 k. Any change affecting the right or ability of persons to participate in
2 political campaigns which is affected by a jurisdiction subject to the
3 requirement of §5.

4 34. Each change is subject to a preclearance process, which the U.S. Attorney General
5 has set out in thirty-nine subsections of excruciating detail in the Code of Federal Regulations.
6 *See* 28 C.F.R. §§ 51.20 to 51.61, 51.65 to 51.67.

7 35. The §5 preclearance process is costly and burdensome. In addition to the cost of the
8 submission itself, proposed changes are subject to significant delays awaiting approval from the
9 U.S. Attorney General. This has resulted in delay and uncertainty in the conduct of state
10 elections. Examples of those burdens are set forth below.

11 **SB 1001**

12 36. On February 9, 2010, Arizona Governor Jan Brewer signed SB 1001 into law.
13 The bill authorized a special election to be held on May 18, 2010, to allow the citizens of
14 Arizona to vote on an early tax increase to avoid further cuts to education. On February 22,
15 2010, the Arizona Attorney General's Office submitted this bill to the United States Department
16 of Justice. DOJ Case No. 2010-0537. If DOJ took its full sixty days to review the submission,
17 the election would not be cleared until April 22, less than a month before the election was to be
18 held. Arizona therefore asked for expedited consideration. Despite the request for expedited
19 consideration and the fact that holding a special election could in no way undermine the voting
20 rights of minority voters, DOJ failed to notify Arizona that it would not interpose an objection to
21 SB 1001 until April 12, 2010, a month and a half later.

22 **HB 2788**

23 37. On April 1, 2010 the Governor signed HB 2788 into law. HB 2788 contained an
24 emergency clause, which means, that under Arizona law, it was effective immediately upon the
25 Governor's signature. On April 6, to limit the time in which Arizona had a law that it could not
26 enforce on the books, the Arizona Attorney General's Office sought expedited consideration.
DOJ File No. 2010-1826. Despite the request for expedited consideration, DOJ failed to notify

1 Arizona that it would not interpose an objection to HB 2788 until June 4, 2010—only one day
2 before the sixty-day limit.

3 38. The VRA’s vast scope creates a burden for Arizona and its political subdivisions
4 to ensure that a submission is made for each change that falls within the scope of the VRA.

5 39. Arizona has been required to file dozens of preclearance submissions each year.
6 See <http://www.azag.gov/Preclearances/> (providing lists of recent years’ submissions). Upon
7 information and belief, the State’s political subdivisions make hundreds of such submissions
8 each year. In addition to seeking preclearance for SB 1205, Arizona will needlessly be required
9 to submit additional electoral changes in the future for preclearance.

10 40. Although the U.S. Attorney General rarely objects to proposed changes in voting
11 practices of Arizona and its political subdivisions, the process imposes unnecessary and
12 significant costs on government units of this State not only in terms of money and time, but also
13 in terms of the federal government’s intrusion on the sovereignty of state and local governments.

14 **UNEQUAL TREATMENT OF STATES**

15 41. The discrimination against Arizona, as opposed to treatment of other states, under
16 the statute and its application, also shows that the statute and its application lack a rational basis
17 and are unconstitutional.

18 42. Nevada is an uncovered state. In the 1972 election, 49.5% of Nevada’s voting age
19 residents voted. (See <http://uselectionatlas.org/RESULTS/>). Also, none of Nevada’s current
20 laws protecting non-English-speaking voters had been enacted. (See Nev. Rev. Stat. § 293.2699
21 (added 2003); Nev. Rev. Stat. 293.296 (added 1973); Nev. Rev. Stat. 293C.282 (added 1997)).

22 43. In the 1970 census of Nevada residents, 5.5% were classified as “persons of
23 Spanish language,” 4.1% were classified as “persons of Spanish origin or descent,” and 0.1%
24 were classified as “persons of Puerto Rican birth or parentage.”⁴ The Nevada census did not
25 record the number of “persons of Spanish surname,” (*see id.*), but many of the “persons of

26 _____
⁴ See U.S. Department of Commerce, Bureau of the Census, 1970 Census of Population, Vol. I
Characteristics of the Population, Pt. 4 Arizona, Table 60 Ethnic Characteristics by Size of
Place: 1970 (Issued Feb. 1973), attached as Exhibit A.

1 Spanish origin or descent” and “persons of Puerto Rican birth or parentage” would have been
2 included.

3 44. Assuming that the percentage of Nevada’s “persons of Spanish language” did not
4 drop below 5% in the two-year period following the 1970 census, had Nevada been subject to
5 the same “Spanish heritage” formula as Arizona, which included *both* “persons of Spanish
6 language” *and* “persons of Spanish surname,” Nevada would have been covered.

7 45. Hawaii is another uncovered state. In each of the last eight presidential elections
8 (since 1980), the percentage of voting age persons who voted in Hawaii was below fifty percent
9 and was lower than Arizona. Likewise, in each of the last six presidential elections (since
10 1988), the percentage of voting age persons who voted in Nevada never exceeded that of
11 Arizona by more than 0.8%. Conversely, during the last eight presidential elections (since
12 1980), neither Alaska nor Louisiana has had voter turnouts of less than fifty percent. Yet Alaska
and Louisiana are covered jurisdictions in their entirety.⁵

13 46. Though there are many states that are deemed “uncovered” by the 1975 VRA and
14 its amendments, these uncovered states are no more or less likely than Arizona to deny limited-
15 English proficient Hispanic voters the opportunity to participate in the electoral process on an
16 equal basis with other members of the electorate. Indeed, Arizona has not violated the 1975
17 VRA. Hispanic citizens in Arizona, including those who are “limited English proficient”
18 participate fully in the electoral process, register to vote, cast votes for representatives of their
19 choice, have access to voting materials in English and in Spanish, and can mark ballots in
20 English or in Spanish. In short, Arizona meets its obligations under the Constitution by
providing essential services so that Hispanic voters may exercise their right to vote.

21 **VI. DECLARATORY JUDGMENT**

22 **i. General Assertions**

23 47. The preclearance requirements imposed on the State of Arizona and its political
24 subdivision should be stricken as unconstitutional under the Tenth, Fourteenth, and Fifteenth
25 Amendments.

26 _____
⁵ Determination of the Director of the Census Pursuant to § 4(b)(2) of the Voting Rights Act of
1965, 30 Fed. Reg. 9897 (1965) (Louisiana); Voting Rights Act Amendments of 1975, 40 Fed.
Reg. 49422 (1975) (Alaska).

1 48. Arizona and its political subdivisions are being punished for conditions that
2 predated the enactment of the 1975 VRA. Indeed, those conditions were remedied in 1974
3 when Arizona provided equal access to the electoral process for limited English Hispanic voters.
4 Arizona’s commitment to ensure that its Hispanic voters have proper opportunities to engage in
5 the electoral process has been undiminished since 1974. There is no justifiable reason for
6 infringing on Arizona’s sovereignty and imposing the extreme burden of preclearance
7 procedures on Arizona when Arizona does not engage in discriminatory practices against
8 Hispanic voters.

9 49. In reauthorizing §5, Congress irrationally continued preclearance requirements on
10 states even when the discriminatory conditions did not exist at the time of the enactment of the
11 1975 VRA or had ceased to exist since the adoption of the 1975 VRA. There is no reason to
12 require Arizona to be subject to preclearance requirements when it has not engaged in
13 discriminatory practices against Hispanic voters for more than 35 years.

14 50. Now, more than 35 years after the 1975 VRA was enacted, it is arbitrary and
15 irrational for Congress to continue preclearance. Section 5 should be struck down as
16 unconstitutional, either on its face or as applied.

17 51. It is unjust for Congress to rely on findings that did not exist in Arizona when the
18 1975 VRA was enacted and certainly have not existed for over 35 years.

19 **ii. Facial Challenge to Overreach in the 2006 Reauthorization of the VRA**

20 52. This section incorporates paragraphs 1 through 51 by reference.

21 53. As the Supreme Court has recently explained, §5 of the VRA suspends “all
22 changes to state election law—however innocuous—until they have been precleared by federal
23 authorities in Washington, D.C.” *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct.
24 2504, 2511 (2009) (“NAMUDNO”). Such heavy handed intrusion on state sovereignty exceeds
25 Congress’s authority under the Fourteenth and Fifteenth Amendments.

26 54. Furthermore, as enforced, states are required to seek federal approval even for
changes that provide greater voting access to racial or “language minorities” or, alternatively,
federal approval is required even though the changes have and will have no impact on the right

1 of “language minorities to equally participate in the electoral process. 28 C.F.R. § 51.12.
2 Section 5 of the VRA is not rationally related to the goal of the Fifteenth and Fourteenth
3 Amendment and exceeds Congress’s authority.

4 55. “The powers not delegated to the United States by the Constitution, nor prohibited
5 by it to the States, are reserved to the States respectively, or to the people.” U.S. Const., amend.
6 X. “Under our Constitution, the Federal Government is one of enumerated powers.” *City of*
7 *Boerne v. Flores*, 521 U.S. 507, 516 (1997).

8 56. Therefore, the State asks this Court to declare §5 of the VRA unconstitutional and
9 enjoin enforcement of it as spelled out in the prayer for relief.

10 **iii. Challenge to § 4 Formula of the VRA as Applied to Arizona**

11 57. This section incorporates paragraphs 1 through 56 by reference.

12 58. In reauthorizing the VRA in 2006, Congress exceeded its authority under the
13 Fourteenth and Fifteenth Amendments because it imposed current burdens on covered
14 jurisdictions without a basis in current need, and thus Congress’s action was not rationally
15 related to enforcing the Fifteenth and Fourteenth Amendments.

16 59. Even prior to the 1974 elections, Arizona had switched to a bilingual election
17 system, which included ballots, voting machine forms, and voting machine instructions in both
18 Spanish and English.⁶ In light of these facts, the use of 1972 as the bench mark made the statute
19 irrelevant, and not related to any rational purpose.

20 60. In 2006, Congress recognized that “significant progress” had been made in
21 addressing the concerns that originally justified the VRA and cited “increased numbers of
22 registered minority voters, minority voter turnout, and minority representation.”⁷

23 61. Neither the 1975 amendment nor the 2006 VRA supported including or
24 maintaining Arizona as a covered jurisdiction.

62. Because the amendments and re-authorization exceeded Congress’s authority, the

25 ⁶ See Extension of the Voting Rights Act of 1965: Hearing Before the S. Subcomm. on
26 Constitutional Rights of the Comm. on the Judiciary, 94th Cong. (April 30, 1975) (Testimony of
Hon. Barry Goldwater, A U.S. Senator From the State of Arizona).

⁷ See Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization
and Amendments Act of 2006, H.R. 9, 109th Cong. § 2(b)(1) (2006).

1 State asks this Court to declare § 4(b) of the VRA unconstitutional and enjoin enforcement of it
2 as spelled out in the prayer for relief.

3 **vi. Facial Challenge to Unequal Treatment of States Under the VRA**

4 63. This section incorporates paragraphs 1 through 62 by reference.

5 64. The VRA differentiates among the States in violation of the nation’s tradition that
6 all States enjoy equal sovereignty.

7 65. Current data shows that covered jurisdictions are no more likely than other states
8 to be accused of abridging the voting rights of minority voters.

9 66. The lack of rationality in differentiating among the states constitutes a violation of
10 the Fourteenth and Fifteenth Amendments.

11 67. Because this differentiation can no longer be justified, the State asks this Court to
12 declare §§ 4(b) and 5 of the VRA unconstitutional and enjoin enforcement of them as spelled
13 out in the prayer for relief.

14 **v. Challenge to Unequal Treatment of States as the VRA is applied to Arizona**

15 68. This section incorporates paragraphs 1 through 67 by reference.

16 69. The 1975 VRA “language minority” coverage formula unconstitutionally
17 differentiates between states by applying three different standards for “Spanish heritage” to three
18 different groups of states. For example, Arizona would not have been covered by the definition
19 applied to New Jersey, New York, and Pennsylvania. Similarly, Nevada would have been
20 covered by the definition applied to Arizona.

21 70. There is no rational relationship between these “language minority” formula
22 differentiations among U.S. States and any constitutional delegation of power to the federal
23 government.

24 71. Because this differentiation has no rational basis, the State asks this Court to
25 declare §§ 4(b) and 5 of the VRA unconstitutional and enjoin enforcement of them as spelled
26 out in the prayer for relief.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff respectfully request that:

3 A. The Court declare that §§ 4(b) and 5 of the VRA exceed the power of Congress.

4 B. The Court declare that §§ 4(b) and 5 of the VRA, both generally and particularly
5 as applied by the U.S. Attorney General to the State of Arizona, unconstitutionally differentiate
6 between states without sufficient justification;

7 C. The Court permanently enjoin the Defendant from enforcing §§ 4(b) and 5 of the
8 VRA.

9 D. Alternatively, the preclearance requirements of §5 should not apply to the State of
10 Arizona and its political subdivisions.

11 Dated this 25th day of August, 2011.

12 THOMAS C. HORNE
13 Arizona Attorney General

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